

**LAZ**

DOCKET FILE COPY ORIGINAL

**RECEIVED**

JAN 26 1998

**KMUZ-1230**SPANISH RADIOFEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William E. Kennard  
Chairman  
Federal Communications Commission  
Washington, D.C. 20554

January 26, 1998

Re: Comments to FCC's Proposed Rules Concerning  
Auctioning of Radio Broadcast Licenses  
MM Docket No. 97-234; GC Docket No. 92-52; GEN Docket NO. 90-264

Dear Chairman Kennard:

It is my understanding that January 31, 1998 is the final date for settlement of all mutually exclusive radio station applications that have been in the pipe line (prior to July 1, 1997). Although I am not personally involved in any of these applications, I do have friends who have been attempting for almost 10 years to seek resolution of a designated Vancouver, Washington frequency.

In 1989, the Commission allotted Channel 290C2 to Vancouver, Washington, as that community's first local FM service. In response to a window for filing applications (March 14, 1989 to April 13, 1989), more than 24 applicants applied. Presently, it is my understanding that 10 applications are still in contest.

The Commission, up to this point, requires that all mutually exclusive applicants agree to a settlement. Otherwise, the frequency would be auctioned sometime after January 31, 1998. In the case of the Vancouver frequency, this would be completely unfair and against the public interest.

The Vancouver FM frequency is unique because the administrative judge in that case, in affect, determined the winner of the frequency based on comparative points. Prior to this decision being fully executed and final, the Bechtel case froze the progress of this application along with hundreds of other pending applications. The result has been to withhold from the public, the benefit of hundreds of FM broadcast frequencies across the United States, including a new FM station for Vancouver, Washington.

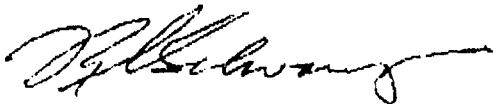
Up until the Bechtel decision, there was an established path that all applicants followed in applying for and obtaining radio frequencies. The Commission's proposed changes (implementing Congress' mandate to auction radio frequencies) alters the entire ball game for all applicants. Because the Commission requires unanimous consent of all mutually exclusive applicants before the Commission will approve the settlement, one or more holdout applicants who (for their own purposes) appear not to be willing to work with the majority, have the power to stop settlements cold, in some cases unfairly.

Page 2

If such stalemates should occur, I respectfully ask that the Commission consider any motions concerning the hold-out applicant(s). For example, if nine out of ten mutually exclusive applicants are willing to settle but there is one hold-out applicant, the Commission should entertain the merits of any motions concerning that hold-out applicant. If for instance, there is a motion concerning the hold-out applicant's qualifications to be a Commission licensee, then the Commission should determine the merits of that motion. If the Commission finds that the hold-out applicant is unqualified to be a Commission licensee, then the Commission should exclude the hold-out applicant, allow the settlement among the nine applicants to go forward, and award the construction permit to the applicant as dictated by the settlement agreement. This will stop non-legitimate hold-out applicant(s) from blocking settlements, which in turn will allow the provision of new broadcast service to the public more quickly and as such, serve the public interest. In addition to benefiting the public, this will also protect those applicants, who have in many cases invested hundreds of thousands of dollars, by allowing stalemate settlements to go forward.

Alternatively, if mutually exclusive applicants must go to auction, the Commission should first reimburse all losing bidders the costs of their expenses in prosecuting their application (in addition to refunding their application fees) before giving the proceeds of the winning bid to the U.S. Treasury, as Congress has mandated. It would otherwise be blatantly unfair for the Government to legislate away the rights of applicants who have diligently prosecuted their applications and have done everything to stay within the FCC's previously established guidelines. Certainly any award of a broadcast license in the Vancouver, Washington case, for example, without some financial remuneration to the losing applicants, may well constitute a violation of the Fifth Amendment's taking clause and may lead to litigation, which will prolong the delay in provision of new FM service to the public.

Very sincerely,



R. L. Schwary  
President